Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Communications Assistance for Law Enforcement Act	CC Docket No. 97-213

SBC COMMUNICATIONS INC. REPLY COMMENTS

I. INTRODUCTION

SBC Communications Inc., on behalf of its affiliates Southwestern Bell Telephone Company, Pacific Bell, Nevada Bell, Southwestern Bell Wireless Inc., Southwestern Bell Mobile Systems, Inc., and Pacific Bell Mobile Services, Inc (collectively "SBC"), replies to comments filed May 8, 1998 related to the extension of the October 25, 1998 compliance date pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"). 47 U.S.C. 1006.[1]

Given the overwhelming record of support for a blanket extension by the Commission, SBC limits its reply to the comments of the Department of Justice and the Federal Bureau of Investigation ("FBI") and Bell Emergis-Intelligent Signaling

[1] Communications Assistance for Law Enforcement Act, *Public Notice,* CC Docket No. 97-213, DA 98-71, rel. April 20, 1998.

Technologies ("IST"). For the reasons discussed below, the Commission should disregard the FBI & IST comments.

II. THE COMMISSION HAS AUTHORITY TO EXERCISE ITS FUNCTIONS IN AN EFFICIENT MANNER

The FBI's comments are riddled with unacceptable interpretations of both Congress's intent and CALEA's statutory language as well as incomplete explanations that result in inappropriate inferences. While facile in denouncing the industry's actions, the FBI's comments ignore the reality of its own direct and disruptive influence on the events which resulted in the filing of the petitions on which the Commission now seeks comment. For example, while the FBI is correct in that Congress gave the telecommunications industry four years to develop solutions to meet the requirements of §103 (FBI, para.7) it fails to explain its overwhelming role in the process that resulted in such delay in meeting the timetable that now compliance is not reasonably achievable by the October, 1998 deadline.

A. Granting An Industry-wide Extension Does Not "Alter" CALEA.

The FBI's Comments are most telling in that they do not argue that the Commission cannot issue extensions, but only that the Commission is not authorized to do so on an industry- wide basis. It declares first that Congress did not authorize the Commission to alter CALEA by granting the industry-wide extension being sought by petitioners. (FBI, para. 2) The FBI offers no support for this statement and in fact, while accusing the industry of ignoring the "clear language" of the statute, (FBI, para. 21) it does exactly the same, totally ignoring the plain words of 47 U.S.C. §1006 which without

requiring specific third party action or limiting Commission authority to responding only to a specific petition, provides:

> The Commission may, after consultation with the Attorney General, grant an extension under this subsection if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably available through application of technology available within the compliance period.

If any party can be accused of "altering" CALEA it is the FBI, by attempting to force the "punch list" down the collective throat of the industry, in violation of CALEA's clear prohibition against any government-mandated network design or service configuration.

The FBI further argues that the Supreme Court has made clear that the Commission cannot exceed its statutory mandate. See, e.g., MCI Telecomm. Corp. v. AT&T, 512 U.S. 218 (1994) ("MCI") (rejecting the Commission's claim of authority to declare tariff filing optional for all non-dominant long-distance carriers because the plain language of the relevant statute made tariff filing mandatory for all common carriers). (FBI, para. 3)

MCI is of no decisional value to the Commission's action in this matter. Not only is MCI completely irrelevant to the present matter, in that it deals with a different statute altogether, but MCI stands for an entirely different point. Under the circumstances of the MCI holding, the court said that the statutory discretion provided by the statute to modify the tariff requirement did not extend so far as to completely eliminate the requirement for some carriers. The FBI's comments imply that granting an extension is tantamount to eliminating the requirement that carriers comply with CALEA.

However, that is specious given that Congress expressly provided the Commission with the authority to grant extensions in §1006(c). Moreover, the grant of an industry-wide extension would not exceed the Commission's authority in the manner that the court found impermissible in MCI. The question of entirely relieving a carrier of its obligation to comply with CALEA is not even an issue with a statutorily authorized extension of the compliance date. On the other hand, the Communications Act does authorize the Commission to exercise its judgment in deciding how it will perform its authorized functions, provided it does so fairly and reasonably. 47 U.S.C. 154(i), 154(j). The FBI cannot be seriously suggesting that the Commission may not execute its authority in an efficient manner, but must wait until a specific party petitions for an extension, and only then grant that individual petition based on a finding (which will apply to all petitions) that the means to comply is not reasonably achievable. Not even the FBI could mean to suggest that such redundant and unproductive requirement is in the public interest.

B. The Record Clearly Evidences The Need For An Extension.

The Commission should disregard the FBI's argument that the petitions filed have failed to establish "beyond bald assertions" the actual need for an industry-wide extension. The weight of the record evidence in this docket clearly indicates that solutions to meet CALEA compliance are not readily available. The Department of Justice's own comments, in its January 26, 1998 Report to Congress, stated that the earliest possible availability of a partial CALEA solution would be the third quarter of 1998. Even this partial solution, however, is not technically workable for most of the industry. (See Section III, infra.) Moreover, the FBI pot calls the industry kettle black by its failure to support its own "bald assertions" of "the critical needs of law

enforcement" (FBI, para. 4) The fact is that, due to the FBI's intransigence and interference in hobbling the standard-setting process and delaying unconscionably its release of workable capacity requirements, industry compliance with the October, 1998 deadline is impossible.

C. The FBI Raises A False Issue By Its "Safe Harbor" Argument.

Contrary to the FBI's assertions (FBI, paras. 3, 27), the comments do not assert that industry has no obligation to comply with §103 of CALEA absent a "safe harbor" standard. If that were the case, parties would not be requesting extensions of the compliance date in the first place. What industry is saying, with remarkable unanimity, is that compliance without settlement of the outstanding issues regarding the industry standard is not reasonably achievable. In fact, we agree with the FBI that "the Act does not mandate than any safe harbor be created at all. The industry's creation of a safe harbor is purely voluntary, and if the industry had declined to issue any safe harbor standards, the Act would not have required the Commission to fill the vacuum with a rule." (FBI, para. 27) However, it is nothing less than outrageous that the FBI, after itself causing the current impasse by demanding assistance capabilities from the industry that it tried and failed to get from Congress, and by completely ignoring its statutory duty to publish a final capacity notice in timely fashion, should now accuse the industry of attempting to evade CALEA.

D. The Industry Is Not Protected By The DOJ Offer.

Finally, in an effort to convince the Commission to refuse to issue a blanket extension for the industry despite the clear unavailability of the solutions that would permit the industry to be compliant by the due date, the FBI states that the

Commission's failure to grant a blanket extension will not create any unreasonable burdens for the industry or the Commission. In explanation, the FBI reports, " The Department of Justice has already begun negotiating with the industry to enter into enforcement forbearance agreements whereby the government will agree to refrain from bringing CALEA enforcement actions in return for a carrier's or manufacturer's agreement to come into compliance with CALEA in an agreed-upon, reasonable time." (FBI, para. 32 & 33)

This is completely disingenuous in that conveniently omitted from the FBI's statement is the fact that the DOJ's offer to the industry regarding "forbearance agreements" is completely contingent upon the industry's agreement to provide all of the items in the "punch list", which of course is the subject of another comment cycle now underway. In other words, unless the industry agrees to include all of the controversial punch list items in its CALEA compliance solutions, there will be no forbearance.

In essence, what the FBI seeks by arguing against an extension of the compliance date is, as noted above, the achievement of something both the FBI and the FCC are specifically prohibited by CALEA from doing: imposing on industry the FBI's own preferred network design and configuration of services, i.e. the "punch list".

III. COMMENTS BY IST SUPPORT THE NEED FOR AN EXTENSION

In direct contradiction to IST's claim that "substantial extensions to the October 1998 compliance date are not mandatory," because it offers a network-based solution that can meet CALEA requirements, IST's comments expressly state that

1. its solution provides a novel approach.
2. its approach resolves only "some of the issues" surrounding compliance to CALEA. (IST, p. 4.)
3. significant production and rollout activity is necessary. (IST, pp. 3, 4.)
4. significant challenges remain to be worked through. (IST, p. 4.)

Notwithstanding the fact that IST obviously stands to reap a major financial reward if it can succeed in having its "solution" adopted to the exclusion of all other possibilities, IST's opinion that an extension is not required cannot be seriously considered. First, the IST product is not ready. According to IST's Comments, it still must "complete productization and roll-out activities" for its product, including "the need for in-depth conformance testing against the CALEA requirements as well as the signaling network protocol and its procedural interworkings." (IST, pp. 3,4.) Moreover, IST admits that "serious challenges in terms of network engineering, contract negotiation, product material sourcing, installation, turn-up and integration testing, and training remain." (IST, p. 4.) Time is required to work out these challenges, and only 5 months remain before October 1998.

Moreover, IST's suggestion that the industry standard should be broadened to include its own product, and that the compliance date therefore need not be extended "substantially", is somewhat silly given the fact that IST could have participated in the standards process all along, yet chose not to contribute anything regarding its "solution", most likely for proprietary commercial reasons. There is nothing wrong with a vendor protecting the confidentiality of its intellectual property, of course, but having

done so, IST is in no position to come in at the eleventh hour and expect to force the entire industry into purchasing its product by presenting itself as a savior.

In any event, as the comments of SBC, BellSouth and Ameritech show, it is by no means clear that IST's product can perform as advertised. As such, it is no closer to being a "solution" than any of the switch-based solutions now under study by carriers and manufacturers. None the less, without challenging any claims that IST makes for its product, the fact is that the industry has not embraced IST as a solution for CALEA compliance. IST even admits that its "novel" solution only resolves "some of the issues" and may facilitate a "stop-gap measure" which in combination with the other unfinished and untested "challenges" that IST describes, suggests that a reasonable and prudent decision by the industry not to rush to the IST proposal surely cannot be faulted. And, that decision is solely that of the industry, as Congress specifically mandated, and not that of the FBI or the FCC.

IV. CONCLUSION

The FBI and IST Comments do not provide any persuasive reason for the Commission to deny an industry-wide blanket extension of the compliance date. Thus, SBC continues to urge the Commission to act expediently and efficiently in extending the present October, 1998 compliance deadline for CALEA's assistance capability requirements by at least two years, to October 25, 2000, or until such date as compliance

with new standards would be reasonably achievable pursuant to §1006(b)(5). Such action is within the Commission's authority and is in the public interest.

Respectfully submitted,

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Date: May 15, 1998

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Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing, "Reply Comments of SBC Cmmunications Inc. " in Docket No. 97-213 has been filed this 15th day of May, 1998 to the Parties of Record.

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May 15, 1998

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